

ELDER ABUSE TRAINING

October 19, 2018
Black Canyon Conference Center
Phoenix, Arizona



THE ELDER JUSTICE ACT AND MANDATORY REPORTING IN ARIZONA

Presented by:

Jesse Delaney

Attorney at Law

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
1951 West Camelback Road, Suite 202
Phoenix, Arizona 85015

ELIZABETH ORTIZ
EXECUTIVE DIRECTOR

ELDER JUSTICE AND MANDATORY REPORTING

APAAC Elder Abuse Training
October 19, 2018

Vulnerable Adult

§46-451(9)

Person 18 years of age or older who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment.

Includes incapacitated person (§14-5101)

Child or Vulnerable Adult Abuse

§13-3623

- A. Likely to produce death or serious physical injury....
- B. Other than those likely to produce death or serious physical injury
- C. Emotional Abuse

Neglect

§46-451 (6) Definition; §46-455 Permitting

Pattern of conduct without the person's informed consent, resulting in deprivation of :

- Food
- Water
- Medication
- Medical services
- Shelter
- Cooling, heating

Financial Exploitation of a Vulnerable Adult

§13-1802 (B)

Person in a position of trust and confidence knowingly takes control, title, use or management of vulnerable adult's property

Indicators of Exploitation

- Depleted bank account
- Unexplained disappearance of funds
- Change in payee, POA or will
- Transfer of property or savings
- Individual reports signing "papers"
- Chronic failure to pay bills, late notices
- Suspicious transactions at odd locations

% of elder abuse cases went unreported

Frequently Unreported.....

- Fear the caregiver/retaliation
- Be prohibited from being alone with visitors
- Have recent or sudden changes in behavior
- Unexplained fear
- Unwarranted suspicion
- Self-destructive activity or suicidal ideation
- Mistrust of others
- Fear of the alternative



The Elder Justice Act (EJA)

- Enacted March 23, 2010
- Part of the Patient Protection and Affordable Care Act
- To address weaknesses in Federal and State abilities to prevent and respond to elder abuse
- Created advisory bodies in the Dept. of Health and Human Services (HHS)
- Authorized Grant Programs

ELDER JUSTICE, defined

Elder Justice Activities:

Activities and efforts to prevent, detect, treat, intervene in and prosecute elder abuse, neglect and financial exploitation

Overriding theme of the EJA:

"Elder justice recognizes an older person's rights and his or her ability to be free of abuse, neglect and exploitation."

Reporting Abuse, Neglect and Financial Exploitation

Mandatory Reporting

- Suspected incidents of abuse, neglect and financial exploitation
- Doctors, nurses, social workers, health professionals, trustees, guardians, attorneys or
- "other persons responsible for the care of vulnerable adults

A.R.S. § 46-454

EJA Reporting Requirements

Everyone is required to report:

- if there is a reasonable suspicion of a crime
- against facility residents
- to Secretary of HHS and law enforcement

EJA: When to Report

Serious bodily injury:
immediately, not later than 2 hours

No bodily injury:
no later than 24 hours

E.J.A. Penalties

\$200,000

\$300,000

participation in healthcare
programs

Arizona's Elder Abuse Statute

- protects vulnerable adults from abuse, neglect and exploitation
- criminalizes neglect 46-455 (A), and
- Criminalizes financial exploitation 46-456 (B)
 - Of an incapacitated or vulnerable adult

§46-451, et seq.

E.R. 1.6 Confidentiality

- (a) A lawyer shall not reveal information unless a client consents after consultation, except for disclosures that are impliedly authorized to carry out the representation, and except...
- (b), (c) and (d) or E.R. 3.3(a)(2)

Ethics Opinion 01-02

Confidentiality
Disabled Clients
Communication with Clients
Disclosure

E. R. 1.14 (b)
Client with Diminished Capacity

Reasonable belief of diminished capacity; and
Risk of substantial physical, financial or other harm unless action is taken; and
Cannot adequately act in the client's own interest

E.R. 1.14 (b), cont.

The Lawyer make take reasonably necessary protective action....

-Consulting with individuals or entities that have the ability to take action to protect the client, and
-Seeking the appointment of a guardian ad litem, conservator or guardian

Elder Justice Website

- <http://www.justice.gov/elderjustice>
- For Victims and family members
- Reporting abuse and exploitation
- Sample pleadings and statutes
- Resources

Making the Report

Emergency: 911
Local Police Non-emergency #
Adult Protective Services
Task Force Against Senior Abuse

TASA

TASKFORCE AGAINST SENIOR ABUSE
ARIZONA ATTORNEY GENERAL MARK BRNOVICH

(602) 542-2124
(800) 352-8431
www.azag.gov/seniors

Adult Protective Services

APS investigator assigned, will respond within 1-5 days

What APS CAN do:

- Evaluate the client
- help client find community resources/services
- interview witnesses
- conduct interviews of suspected perpetrators
- refer findings to law enforcement

APS, continued

What APS CANNOT do:

- remove an adult from his home against his wishes
- prevent an adult from using financial resources
- serve as guardian or conservator
- make a determination of capacity
(can only be determined by the Superior Court)
- interfere with an adult's chosen lifestyle

APS Registry

https://des.az.gov/sites/default/files/APS_Registry_List_11-02-17.pdf

Other Resources

- For Elder Domestic Violence:
 - Late Life DV Program Services, ARC at 520-623-3341 (Tucson area)
- DOVES program
 - 24-Hour Senior HELP LINE at 602-264-4357
- Area Agency on Aging
 - 24-Hour Senior HELP LINE at 602-264-4357
- Adult Protective Services
 - Central Intake at 877- 767-2385
 - Department of Health Services at 602-364-2536

Thank You!

Jesse L. Delaney, Esq.
Law Office of Jesse Delaney
257 North Stone Avenue
Tucson, AZ 85701
Office: (520) 622-8883
Cellular: (520) 275-8342
jessed@jdelaneylaw.com
